U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

L-1

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Applicant: [redacted]

JUL 14 2004

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 210 of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1160

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

PUBLIC COPY

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the District Director, San Diego, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant admitted to an immigration officer that he had not performed 90 man-days of qualifying agricultural employment during the statutory period.

On appeal, the applicant indicates that he was so nervous and upset at the interview that he could not concentrate. He reasserts his employment claim.

The applicant also requests that he be granted another interview. However, there do not appear to be any unique facts or issues of law which cannot be adequately addressed in writing. The applicant's request for an additional interview fails to set forth facts explaining why an additional interview is necessary, and the request must therefore be denied.

The applicant appears to be represented; however, no Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted. This decision will be furnished to the applicant only.

In order to be eligible for temporary resident status as a special agricultural worker, an alien must have engaged in qualifying agricultural employment for at least 90 man-days during the twelve-month period ending May 1, 1986, provided he is otherwise admissible under section 210(c) of the Act and is not ineligible under 8 C.F.R. § 210.3(d). *See* 8 C.F.R. § 210.3(a).

On the Form I-700 application, the applicant claimed 90+ man-days harvesting cherries and grapes for Lind Lloyd at Lind Farms in San Joaquin County, California from August 16, 1985 to April 6, 1986.

In support of the claim, the applicant submitted a corresponding Form I-705 affidavit and two separate declarations of employment, all purportedly signed by [redacted] Another affidavit supposedly from Mr. [redacted] indicated the applicant resided with him during the qualifying period.

Subsequently, during the required interview with an immigration officer on July 20, 1988, the applicant admitted in a signed sworn statement that he had never worked in agriculture during the qualifying period. He stated that he lived with his cousin and worked in a gardening business with him in Los Angeles during the requisite period. Accordingly, the director denied the application based on the applicant's sworn statement.

On appeal, the applicant indicated that he was awaiting the receipt of additional documentation which would tend to establish that he performed at least 90 days of seasonal agricultural services during the statutory period. He did not refer specifically to his claimed employment for [redacted] when he filed the appeal. However, approximately six weeks later he furnished another appeal form on which he contended that before and during the course of the interview, he became so nervous that he could not concentrate on the questions that were being asked. As a result, he maintained, he was willing to agree to admit to any questions or statements that the officer put to him. He provided a new Form I-705 affidavit from [redacted] and requested that he be re-interviewed.

An applicant raises serious questions of credibility when he admits to having provided false information or fraudulent documentation in the application process. An inference cannot be drawn that the information or documentation is now accurate simply because the applicant recants his admission.

Even in cases where the burden of proof is upon the government, such as in deportation proceedings, a previous sworn statement voluntarily made by an alien is admissible, and is not in violation of due process or fair hearing. *Matter of Pang*, 11 I&N Dec. 213 (BIA 1965). Furthermore, in the absence of exceptional circumstances, a challenge to the voluntariness of an admission or confession will not be entertained when first made on appeal. *Matter of Stapleton*, 15 I&N Dec. 469 (BIA 1975).

In this particular case, the signed sworn statement made by the applicant specifically stated that the statement "...must be freely and voluntarily given...." In addition, the statement of the applicant was written in Spanish, and the officer who took the applicant's sworn statement indicated that the interview had been conducted in Spanish, the applicant's native language, and that an interpreter was not used. There is no indication that there was a communication problem at the interview.

In some cases that were denied due to admissions, the officers who conducted the interviews merely alleged that the aliens made verbal statements against their interests. In other cases, the sworn statements were so brief and non-specific as to render them less than useful. Here, in this case, the specificity of the applicant's written statement strongly suggests that if reflects the actual facts.

Accordingly, the employment documentation furnished by the applicant cannot be deemed credible. Under these circumstances, it cannot be concluded the applicant has credibly established that he performed at least 90 man-days of qualifying agricultural employment during the statutory period ending May 1, 1986. Consequently, the applicant has not demonstrated his eligibility for temporary resident status as a special agricultural worker.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.